

(2004) 03 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 5086 of 2000

Bhagirath Patowari

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) GLT 689 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : P.C. Deka and G.K. Bhattacharjee, for the Appellant; Anima Hazarika, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—In this application under Article 226 of the Constitution, the Petitioner has challenged the decision of the Executive Council (Special) of the Gauhati University held on 24.3.2000, wherein the correction of age of the Petitioner was set aside and it was held that the date of birth of the Petitioner is 1.4.1936 and he was deemed to have been superannuated on 31.3.1996.

2. The Petitioner before us had passed his Matriculation Examination in the year 1955 from Chamata Govt. Aided High School and therefore he joined as L.D.A. in the Office of the Executive Engineer, P.W.D., Guwahati Division and worked from 12.11.56 and thereafter he became Asstt. Divisional Accountant on 1.1.62. The Petitioner thereafter joined the service of the Gauhati University in the year 1963. The Petitioner served the Gauhati University in various position and he was appointed as Deputy Treasurer in the year 1991. In the year 1995 the Petitioner was appointed as a Treasurer of the Gauhati University for a period of 5 years and from the date of joining of till attaining the age of 60 years. The Petitioner joined his duties as a Treasurer on 1.1.95. Sometime, in the year 1997 a show cause notice was issued to the Petitioner and there was a long drawn battle between the University authorities and the Petitioner and there was litigations

between the parties and Petitioner approached this Court earlier also.

3. The case of the Petitioner is that the date of birth in the Matriculation Certificate was wrongly recorded as 18 years 11 months as on 1.3.55; whereas his actual date of birth was 1.4.1936. The Petitioner thereafter applied for correction of his age and the said age was corrected in the Matriculation Certificate by the concerned authority. The impugned order is dated 24.3.2000. It may be mentioned here that vide the order dated 3.2.2000 passed in C.R. 6307/98, this Court had directed the Gauhati University to take a final decision in respect of the age of superannuation of the Petitioner. As per the Rules of the Gauhati University, the age of superannuation of an employee of the University is 60 years. The relevant portion of the resolution placed before the Executive Council reads as follows:

As originally recorded in the Matriculation Certificate of Sri Bhagirath Patowari, his age was 18 years 11 months on 1st March, 1955. Accordingly his date of birth is 1st April, 1936, so his date of superannuation falls on 31.03.1996 (A.N.).

Before entering the Gauhati University Service in April, 1963, Shri Bhagirath Patowari had worked in the Public works Deptt. (PWD), Govt. of Assam w.e.f. 10.6.1956, in the regular vacancy of the post Muharrir in the Office of the Executive Engineer, P.W.D., R-7B Gauhati where he was also promoted to the post of Assistant Divisional Accountant, upto 10.4.63. In the Govt. service the minimum age for appointment in a regular post is 18 years. Holding of a regular post by Sri B. Patowari can be confirmed from the letter No. ESTT/539/9433 dtd. 9.8.1985 (Xerox copy already distributed).

But Sri Patowari had managed to get the recorded age in his Matriculation Certificate corrected as 13 years 10 months 16 days as will appear from the corrected copy of Matriculation Certificate. The Xerox copy has been distributed. The correction carried out though signed with the designation seal but that was not dated.

That Sri Patowari had been serving in the P.W.D. from the year 1956 is corroborated by the statement he made in his application for the post U.D.A. in the Gauhati University as has also been confessed by him in his reply to the show cause notice at Page 2 in the fourth line to seventh line.

So his statement that he was not holding a regular appointment in the PWD in 1956 and that his age as originally recorded in the Matriculation certificate 19 years 11 months on 1st March, 1955 is not correct cannot be accepted.

Had his age been 13 years 10 months 16 days on 1st March 1955 his age on 10.6.1956 would have been 15 years 0 month 26 days. Any man with ordinary prudence can easily decipher a boy of 15 years and an adult of 20 years which was the age of Sri Patowari at the time of entering the service of P.W.D.

Therefore, the age correction that was carried out in his Matriculation Certificate is hereby held to be unjustified and set aside.

So in the context of the above, the date of birth of Sri Patowari is taken as on 01.04.1936 as irrefutably correct and as he has completed 60 years on 31.03.1996 (AN) and he is deemed to be superannuated on 31.03.1996.

Weighing all pros and cons in the matter of keeping the justice and equity and the supreme consideration, the Gauhati University is legally bound to take the final decision as regards age of superannuation of Sri Bhagirath Patowari to have taken on 31.03.1996 (AN).

This be taken in the Resolution of E.C. meeting today (01.03.2000) and confirmed as adopted finally.

Sd/- H.L. Duorah, Vice-Chancellor, G.U. 24.3.2000

The Resolution adopted by the Council reads as follows:

The Council finally decides to set aside the corrected age of Sri B. Patowari because of entering the G.U. Service on the basis of his original date of birth on 1.4.1936 and fix his date of superannuation on 31.3.96 the Council also decides that the Registrar be directed to bring similar case of age correction of the G.U. Employed persons for consideration and decision of the Council within 4 (four) months from today.

The Council further decides that Sri B. Patowari be paid his salary beyond 31.3.96 to this date of decision on 24.3.2000 in view of pendency of the cases in Gauhati High Court.

4. Sri P.C. Deka, learned Sr. Advocate has submitted that the Executive Council has no authority to take the impugned resolution as the Council had earlier did not consider it necessary to issue a notice to the Petitioner in its meeting held on 13.2.99. Smt. Anima Hazarika appearing for the Gauhati University has submitted that the decision was in respect of a second notice only and it was adopted taking into consideration that the earlier notice would suffice for the purpose and against which notice, the employee had already submitted his reply.

5. We also find that in C.R. 6307/98, to which the Writ Petitioner B. Patwari was a party as Respondent No. 4, this Court had directed as below:

In the interest of all concerned, including the Respondent No. 4, the final decision by the University with regard to the age of superannuation of the Respondent No. 4 had taken as early as possible in accordance with the Rules.

6. The Petitioner had not challenged the above direction of the learned Single Judge by preferring an appeal and the said order has reached its finality. The Petitioner, therefore, is stopped from challenging the locus of the Respondent authorities to take a decision as regards the date of superannuation. In the Writ petition, the Petitioner has stated in para 3 that he was serving in the Office of the Executive Engineer, P.W.D., Guwahati Division from 12.11.56, though against leave vacancy. If we accept the Petitioner's contention that his date of birth was 1.4.1941 in that case the Petitioner would have been of the age of 15 years in

the year 1956. It is inconceivable that at such a tender age, a boy would be appointed in a Govt. department, where the minimum requirement was much higher.

7. The Respondent authorities have produced the personal file including the application in original filed by the Petitioner before the Gauhati University. The application is dated 4.2.1963 and it was for the post of U.D. Asstt. and the relevant portion of the said application reads as follows:

5) Qualification : I passed B.Com Examination under Gauhati University in 1962.
6). Experience : I have been serving as L.D. Asstt. since 1956 and Asstt. Divisional Accountant since 1st, Nov./62 in the Office of the Executive Engineer, P.W.D.(R & B), Gauhati Division, Gauhati. 7) Date of birth : 1st April, 1936.

8. The date of birth mentioned in the said application tallies with the Matriculation Certificate of the Petitioner (before correction). We find that the Petitioner has prayed for appointment to the post of U.D.A. on the basis of 6 years experience as L.D.A. and Asstt. Divisional Accountant. We find force in the submission of Smt. A. Hazarika that in absence of six years experience in a Govt. Department the Petitioner would not have been appointed as U.D.A. in Gauhati University in the year 1963. Thus, we find that the Petitioner had taken the advantage of his date of birth once for the purpose of entering into the service and now he wants to take Anr. advantage by claiming the correction in the Matriculation Certificate. The above practice has been deprecated by the Apex Court in the case of Union of India Vs. C. Rama Swamy and others, wherein it was held that if an employee once takes the advantage of his age for entering into the service, he would not be allowed to take Anr. advantage for prolonging retirement. The Petitioner has approached this Court seeking equity but we find that the Petitioner has not come with clean hands and he now wants to show that he was not serving as a regular LDA in the Office of the Executive Engineer since 1956; whereas the application form filed by the Petitioner states otherwise. We also find from the personal file of the Petitioner produced by the University authority that in the year 1975, the Petitioner had submitted an application for the post of Internal auditor pursuant to an advertisement No. 1/75 and in the Experience column it is mentioned-As LDA in the Office of the Executive Engineer, P.W.D., Guwahati Division-4 years; As Asstt. Divisional Accountant in the said office for about 2 years, which goes to support the statement made in the original application, as quoted above.

9. In view of what has been stated above, we find that there is no infirmity or illegality in the impugned resolution passed by the Executive Council. There is no allegation of the violation of any Rules or principles of natural justice in taking the decision and so far the decision is concerned, it is based on facts and records and it is in accordance with law.

We, therefore, find no merit in this writ petition and the writ petition is accordingly dismissed with costs.